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Omnibus on Enabling Effective Procedures - simplifying Environmental Legislation



Contact:

Dr. Florian Anderhuber

Deputy Director General – Energy,
Climate, Sustainability

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From Slow Motion to Time Lapse

Euromines supports the new EU agenda on simplification and better implementation. Speed, coherence, and simplification are vital to strengthen European competitiveness and must be the overarching principle for the Commission's future work programme. The first omnibus proposals of the Commission are much appreciated, and more are needed to resolve bottlenecks and overlaps or contradictions – in particular when it comes to permitting.

Europe's future depends on its ability to deliver on the promise of a sustainable business case – and permitting for raw material projects is at the core of this: clean energy, digital infrastructure, food security and resilient access to raw materials. Yet across Member States, permitting authorities are faced not with lack of rules but the opposite: a high degree of complexity and an increasing number of rules as well as ever more ambitious requirements, a high risk of undue appeals, reversals, or political backlash leading to unpredictable delays, differences in or sometimes contradictory interpretation across actors involved and legal uncertainty.

The result is vital projects stalled and lost investments. The current complex and growing rulebook makes obtaining a reliable permit in an efficient, predictable and expedited procedure extremely difficult. Further it has also become conducive to the risk of prolonged and uncertain entanglement in appeals and reversals.

Unblocking Europe's Raw Material Potential and strengthening our value chains: Trust, Structure, and Responsibility

To overcome a legislative framework that has become a hurdle to the competitiveness of the EU industry and future investments, a new omnibus on permitting is necessary to restore competitiveness, spread best procedural practices and strengthen domestic value chains without compromising our environmental performance and ambition.

To that end, EU legislation governing permitting has to become faster and more efficient - the legal framework should reflect the need for a practical, proportionate and outcome-focused implementation. Instilling confidence in the process means clear and adequate requirements and predictable, timely outcomes. This is more than early engagement and clearer timelines – permitting needs to be understood as aiming toward the **shared success of both authorities and operators**, pursuing the same objective, and avoiding undue judicialization of the outcome that ultimately undermines permitting authorities.

This proposal contains four simplifications that would allow permitting authorities to explore smarter, earlier, simpler and more predictable pathways to a permit in order to accelerate the Clean Transition and secure raw materials.

A. Current situation:

Access to raw materials and security of supply chains are a key priority and will become even more important in the future to secure raw materials supply and to reduce critical dependencies from non-EU suppliers.

However, administrative burden, lengthy and complex permitting procedures, and overly restrictive obligations are critical hurdles for industry and even could lead to potential bans for certain indispensable activities in Europe.

Over the last decades, the environmental legislative framework of the EU has become a rigid system with often not enough flexibility to provide the necessary adjustability to local or sector specific conditions.

For example, permitting procedures in the European mining sector can take up to 15 years, whereas similar projects in countries with related political and legal systems, like Canada or Australia, can take substantially less.

While promoting digitization, shorter deadlines and more human resources for permitting, authorities can shorten that time, as these actions are largely in the competence of Member States. This is however a “band-aid” – and may even accelerate a final negative, instead of a substantiated positive, decision.

To remedy this, the EU environmental acquis requires simplification towards more practicability – that provides effective environmental protection yet ensures the possibility of trade-offs where necessary.

The EU's raw materials strategy hinges on rapid deployment of mining and processing capacity. However, permitting remains a critical bottleneck due to fragmented, slow, and legally uncertain processes. This Permitting Omnibus, modeled after the Reporting Simplification Omnibus, proposes concrete legislative changes to streamline and strengthen the resilience of EU value chains, competitiveness and access to raw materials, by focusing on measures to:

- Increase efficiency in permitting requirements and decision making
- Accelerate permitting procedures for greenfield as well as brownfield projects
- Clarify legal obligations to reduce duplication and conflicts
- Strengthen regulatory certainty and reduce litigation risk
- Support the overall ambition of resilient and clean value chains

- And thus support the stated ambitions and mandate of the Critical Raw Materials Act

B. Key principles:

The overarching principle should be simplifying procedures by avoiding repetition, duplication, and gold plating in implementation, and by balancing imperatives of industrial production and environmental protection in a straightforward way. Supporting regulators to come to well-founded, high-quality conclusions that can avoid legal hard-stops due to inadmissibility in such procedures.

- Address burden multiplication: the combined impact of European Water Legislation / Water Framework Directive, Natura 2000 and Nature Restoration Regulation, Industrial Emissions Directive (IED), Soil Monitoring and Resilience Directive leads to a situation in which all individual requirements of every single legislation become impossible to fulfil – handicapping the possibility to receive any permit. Streamlining requirements across legislation and allowing for well-founded tradeoffs is necessary.
- Balancing imperatives: raising the bar of environmental protection requirements higher and rendering them more and more granular goes beyond technical capacities and consequently lead to less industrial activity – rather than allowing flexibility where possible and feasible through novel approaches to ensure a sound and sustainable industry in Europe. Currently, legal details can stop large industrial projects by making it legally impossible to admit them, with no guidance or flexibility for balancing interests. Recourse to derogations and exemptions is required – yet also induces legal uncertainty. Rather, instead of relying on this, regulatory requirements should suffice from the start for such cases.

Support permitting authorities: Put bluntly tightening timelines for permitting decisions neither addresses shortages in resources and staff of authorities, nor diverging interpretations of requirements between departments. It does not solve the risk of undue appeals, reversals, or political backlash that a decision or procedure may entail. That can instead undermine the reasoning of authorities or prompt loops and repetitions of stage gates in the procedure, thereby artificially drawing out the decision.

Expediting procedures therefore requires both a shared understanding of a balanced, goal-oriented mission across all authorities involved and institutionalized and mandated problem-solving based on a simplified, outcome-oriented rulebook: A watertight permit is in the interest of both industry and the authorities as liabilities do not go away by cutting corners. Simplifying entails therefore mandating Member States to make use of flexibility and the trade-offs allowed within legislation wherever possible – but also clarifying and rendering the legal framework more predictable and streamlined.

Last but not least, introducing the concept of “Strategic Zones” or “Go-To-Zones” with pre-cleared planning would allow to support industrial investments in the raw materials and manufacturing value chain

C. Key recommendations

1. European Water Legislation / Water Framework Directive

Currently the Water Framework Directive and the associated Environmental Quality Standards Directive are being revised. The Commission has proposed more and stricter environmental quality standards and speedier process for introducing more standards in the future. The Commission is also preparing the European Water Resilience Strategy that will develop a multi-annual cross-sectoral plan with milestones in 2030 or 2040.

In this context it should be emphasized that the EU already has a very robust framework for water protection through the Water Framework Directive (WFD) and its related directives.

Rather than introducing additional legislation, the EU should address the legal and practical challenges and uncertainties that are created by the Water Framework Directive and its far-reaching goals and obligations. This concerns the question of whether the WFD’s objectives can be reached in Member States by 2027 at all, and moreover, the uncertainties connected to the WFD’s derogations and exemptions. These uncertainties need to be addressed urgently.

In general, the WFD should avoid conflicting objectives: addressing environmental challenges in a holistic way ensures an appropriate balance between environmental protection goals and socioeconomic/sustainable development. To name one example: the WFD introduced the so-called “one-out-all-out” principle to assess the quality of EU water bodies. Subsequently, the worst status of the parameters assessed would determine the overall status of the water body, often obscuring progress in some areas due to stagnation. While industries have successfully mitigated their impact on water bodies, the current assessment framework does not adequately reflect these improvements, resulting in distorted assessments of water quality status. The reality is that administrative estimates of EQSs have the power to stop industrial projects although reality-based assessments from the project's side may show no real deterioration in the conditions for aquatic life.

To allow further development of industrial and mining activities the EU needs a regulatory framework that provides Member States more room to balance interests against each other, e.g. the interest of protecting a habitat or a water body against the interest of building a new modern mine or other industrial facility.

Lastly, careful consideration must be given to potential conflicts between existing and new regulations and the EU's broader strategic objectives. For instance, increasing regulatory burdens without proper alignment could undermine domestic raw materials supply security, the Critical Raw Materials Act, the Clean Industrial Deal and other key initiatives, ultimately slowing the EU's transition to a greener and more resilient future.

Considering the above the opportunity should be taken to rethink water policy: EU Water Resilience Strategy must ensure that water policies support, rather than obstruct, the green transition and domestic raw materials supply chains.

This new initiative provides a critical opportunity to analyse the Water Framework Directive (WFD) comprehensively, resolving inconsistencies and disproportionate consequences. In practice the very ambitious WFD's objectives (good status/no deterioration principle) and the WFD's exemptions must become a functioning system.

But measures must also be taken on a shorter term. An omnibus on environmental legislation should at least include an adequate expansion of derogation and exemption possibilities, so as to ensure that Member States may balance the interest of meeting every quality standard and other parameters against other public interests. Particularly the important derogation in Article 4 (7) of the WFD must be addressed, which in its wording does not provide for any derogation at all in the case of failure to achieve good chemical status of surface waters. It should be amended so that no constellation of circumstances is excluded from the scope of this exemption from the outset.

Furthermore, the option to extend the deadline for achieving good status only exists until 2027 in the case of anthropogenic impacts in accordance with Article 4(4)(c) of the WFD. A realistic extension of the deadline extension option is required here. And it should be given consideration to whether the 'no further deterioration' requirement in Article 4(5) WFD on the less stringent objectives could be deleted or alternatively a stepwise approach and definition of deterioration.

An adequate expansion of derogation and exemption possibilities within the existing requirements of the Water Framework Directive would support the permitting of industrial and mining installations along entire value chains without jeopardizing improvements and protection of European waters.

2. Natura 2000 and Nature Restoration Regulation

The new Nature Restoration Regulation will practically lead to a significant extension of protected areas beyond the existing Natura 2000 areas. In future, this will make access to land for industrial, mining and other social or economic activities more difficult. Although the

initiative of nature restoration is laudable and important, once again the legislator has had an approach that will prevent and stop activities, instead of enabling and encouraging alternatives that involve collaborative, innovative and considerate solutions. Altogether the new regulation will aggravate or even endanger the realization and permitting of projects in the mining (and other industrial) sector – weakening once more the competitiveness of the mining industry.

This is unfortunate considering that already today an update of the Natura-2000-Directives is needed to adapt to new challenges and requirements. Some industrial projects, like mining and other extractive industries, will inevitably have some impact on the land where they take place. Today, a Natura 2000 assessment of a project is often a real deterrent to investment. This is the case even where there are solutions to ensure that extractive industries can be combined with high or even increased biodiversity. The difficulties lie not only in environmental requirements but also, and to a large extent, in the procedural requirements and the excessive burden of proof that follows from the case law of the European Court of Justice, sometimes also legally intertwined with the non-deterioration principle on water and without room for derogation, re-assessments or balancing of interests.

Improvements to the legal framework are possible and needed to reduce the increasing complexity of procedures for the companies operating. For instance, possible changes could be: the possibility of creating larger yet spatially unconnected compensation areas for nature; Flexibilization of measures to ensure coherence (i.e. stockpiling of areas/habitat banking, biodiversity off-setting etc.); Implementation of a pragmatic standard for carrying out the impact assessment under the Flora-Fauna-Habitats Directive.

3. Industrial Emissions Directive (IED)

The new IED includes metal mining in its scope. In this regard the new IED leads to substantial additional financial and administrative burdens, weakening the competitiveness of the European (metal) mining sector.

In particular, the preparation of the corresponding Metal Mining BREF shows to be very difficult and complex. This is due to the fact that within the sector mines differ considerably from each other – depending on the individual geology, geometry, deposit and extraction method etc. Altogether this demonstrates again that the diverse composition of the mining sector renders the ambition to derive common best available techniques as unfit for purpose as in many instances those may apply today to just a single mine.

Considering the above, any further expansion of the scope of the IED to other mining activities or sectors needs to be avoided by any means.

The updated IED seems to be based on the view that innovation and technological and economic development are primarily driven by regulations and bureaucracy. In fact, the new IED will – due to its substantial new and challenging requirements - impede investments into the strengthening and establishment of value chains – and it will foil the promise of promoting competitiveness as part of the transformation towards a climate-neutral industry. Therefore, we would support a reconsideration of the IED's regulatory requirements where these do not provide any obvious added value for either the resilience of our industry, or for environmental protection. This should address for instance the additional IED-environmental management system requirements, chemical management and transformation plans that in many instances will entail a duplication of regulatory efforts. Instead, the focus of the IED should be on streamlining permitting and on identifying only **relevant** Best Available Techniques

4. Soil Monitoring and Resilience Directive

Recently, European institutions agreed on a provisional text for a new EU Soil Monitoring and Resilience Directive.

The agreement does not provide a sufficient framework for sustainable soil functioning but would rather create an administrative burden, overlapping legislation and more bureaucracy for the private sector and local authorities. Representatives from the industrial, raw materials and agricultural sectors have pointed out that soil protection is already regulated at national level and additional EU legislation in this field contradicts the EU's agenda on competitiveness and simplification and disrespects the principle of subsidiarity.

To ensure and improve the protection of soil, the implementation of existing legislation at national and EU level and the dissemination of good practices already provide a robust framework.

Practically, the proposed EU Soil Monitoring Law could unintendedly lead to a de facto ban for mining activities due to restrictive soil health parameters and a restrictive principle to avoid land-take as much as possible.

For more information:

Dr. Florian Anderhuber
Deputy Director General – Energy, Climate, Sustainability
anderhuber@euromines.be